



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 282

[EPA-R10-UST-2019-0191; 9996-69-Region 10]

Oregon: Final Approval of State Underground Storage Tank Program Revisions, Codification and Incorporation by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: Pursuant to the Resource Conservation and Recovery Act (RCRA or Act), the Environmental Protection Agency (EPA) is taking direct final action to approve revisions to the State of Oregon's Underground Storage Tank (UST) program submitted by the State. The EPA has determined that these revisions satisfy all requirements needed for program approval. This action also codifies the EPA's approval of Oregon's State program and incorporates by reference those provisions of the State's regulations that we have determined meet the requirements for approval. The State's federally-authorized and codified UST program, as revised pursuant to this action, will remain subject to the EPA's inspection and enforcement authorities under Sections 9005 and 9006 of RCRA Subtitle I and other applicable statutory and regulatory provisions.

DATES: This rule is effective **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, unless the EPA receives adverse comment by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. If EPA receives adverse comment, it will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. The incorporation by reference of certain material listed in the regulations is approved by the Director of the Federal

Register, as of [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Submit your comments by one of the following methods:

1. Federal eRulemaking Portal: <https://www.regulations.gov>. Follow the online instructions for submitting comments.
2. Email: wilder.scott@epa.gov.
3. Mail: Scott Wilder, Region 10, Enforcement and Compliance Assurance Division, EPA Region 10, 1200 Sixth Avenue, Suite 155, MS: OCE-201, Seattle, WA 98101.
4. Hand Delivery or Courier: Deliver your comments to Scott Wilder, Region 10, Enforcement and Compliance Assurance Division, EPA Region 10, 1200 Sixth Avenue, Suite 155, Seattle, WA 98101.

Instructions: Direct your comments to Docket ID No. EPA-R10-UST-2019-0191. EPA's policy is that all comments received will be included in the public docket without change and may be available online at <https://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov>, or email. The Federal <http://www.regulations.gov> website is an "anonymous access" system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to the EPA without going through <http://www.regulations.gov>, then your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, then the EPA

recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If the EPA cannot read your comment due to technical difficulties, and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

You can view and copy the documents that form the basis for this action and associated publicly available materials from 8:30 a.m. to 4:00 p.m. Monday through Friday at the following location: EPA Region 10, 1200 Sixth Avenue, Suite 155, Seattle, WA 98101, phone number (206) 553-6693. Interested persons wanting to examine these documents should make an appointment with the office at least 2 days in advance.

FOR FURTHER INFORMATION CONTACT: Scott Wilder, (206) 553-6693, wilder.scott@epa.gov. To inspect the hard copy materials, please schedule an appointment with Scott Wilder at (206) 553-6693.

SUPPLEMENTARY INFORMATION:

I. Approval of Revisions to Oregon's Underground Storage Tank Program

A. Why are revisions to state programs necessary?

States which have received final approval from the EPA under RCRA Section 9004(b) of RCRA, 42 U.S.C. 6991c(b), must maintain an underground storage tank program that is equivalent to, consistent with, and no less stringent than the Federal underground storage tank program. When the EPA makes revisions to the regulations that govern the UST program, states must revise their programs to comply with the updated regulations and submit these revisions to the EPA for approval. Most commonly, states must change their programs because of changes to the EPA's regulations in 40 Code of Federal Regulations (CFR) part 280. States can also initiate

changes on their own to their underground storage tank program and these changes must then be approved by the EPA.

B. What decisions has the EPA made in this rule?

On October 19, 2018, in accordance with 40 CFR 281.51(a), Oregon submitted a complete program revision application seeking the EPA approval for its UST program revisions (State Application). Oregon's revisions correspond to the EPA final rule published on July 15, 2015 (80 FR 41566), which revised the 1988 UST regulations and the 1988 State program approval (SPA) regulations (2015 Federal Revisions). As required by 40 CFR 281.20, the State Application contains the following: a transmittal letter from the Governor requesting approval, a description of the program and operating procedures, a demonstration of the State's procedures to ensure adequate enforcement, a Memorandum of Agreement outlining the roles and responsibilities of the EPA and the implementing agency, a statement of certification from the Attorney General, and copies of all relevant state statutes and regulations. We have reviewed the State Application and determined that the revisions to Oregon's UST program are equivalent to, consistent with, and no less stringent than the corresponding Federal requirements in subpart C of 40 CFR part 281, and that the Oregon program provides for adequate enforcement of compliance with these requirements (40 CFR 281.11(b)). Therefore, the EPA grants Oregon final approval to operate its UST program with the changes described in the program revision application, and as outlined below in Section I.G of this document.

C. What is the effect of this action on the regulated community?

This action does not impose additional requirements on the regulated community because the regulations being approved by this rule are already in effect in the State of Oregon, and are not changed by this action. This action merely approves the existing State regulations as meeting

the Federal requirements and renders them federally enforceable.

D. Why is EPA using a direct final rule?

The EPA is publishing this direct final rule without a prior proposed rule because we view this as a noncontroversial action and we anticipate no adverse comment. Oregon did not receive any comments during its comment period when the rules and regulations being considered in this document were proposed at the State level.

E. What happens if the EPA receives comments that oppose this action?

Along with this direct final rule, the EPA is publishing a separate document in the “Proposed Rules” section of this Federal Register that serves as the proposal to approve the State’s UST program revisions, and provides an opportunity for public comment. If EPA receives comments that oppose this approval, then the EPA will withdraw this direct final rule by publishing a document in the **Federal Register** before it becomes effective. The EPA will base any further decision on approval of the State Application after considering all comments received during the comment period. The EPA will then address all public comments in a later final rule. You may not have another opportunity to comment. If you want to comment on this approval, then you must do so at this time.

F. For what has Oregon previously been approved?

On September 16, 2011, the EPA finalized a rule approving the UST program that Oregon proposed to administer in lieu of the Federal UST program. On April 30, 2012, the EPA codified the provisions of the approved Oregon program that are part of the underground storage tank program under Subtitle I of RCRA, and therefore are subject to the EPA’s inspection and enforcement authorities under RCRA Sections 9005 and 9006, 42 U.S.C. 6991d and 6991e, and other applicable statutory and regulatory provisions.

G. What changes are we approving with this action and what standards do we use for review?

In order to be approved, each state program application must meet the general requirements in 40 CFR 281.11, and specific requirements in 40 CFR part 281, subpart B (Components of a Program Application); subpart C (Criteria for No Less Stringent); and subpart D (Adequate Enforcement of Compliance). This is also true for proposed revisions to approved state programs.

As more fully described below, the State has made the changes to its approved UST program to reflect the 2015 Federal Revisions. The EPA is approving the State's changes because they are equivalent to, consistent with, and no less stringent than the Federal UST program and because the EPA has confirmed that the Oregon UST program will continue to provide for adequate enforcement of compliance with these requirements as described in 40 CFR 281.11(b) and part 281, subpart D, after this approval.

The Oregon Department of Environmental Quality (DEQ) is the lead implementing agency for the UST program in Oregon, except in Indian country.

The DEQ continues to have broad statutory authority to regulate the installation, operation, maintenance, and closure of USTs, as well as UST releases under Oregon Statutes (2017), Chapter 466, Hazardous Waste and Hazardous Materials II, Sections 605 – 995. The Oregon UST Program gets its enforcement authority from the powers and duties of the DEQ found in Chapter 466, Section 015. Under Chapter 466, Sections 765(3), 765(5), and 805(a) the DEQ is authorized to require an owner to furnish records, conduct monitoring or testing, and provide access to tanks. The DEQ is authorized to issue, modify, suspend, revoke or refuse to renew a permit under Chapter 466, Section 775. Penalties for non-compliance may be assessed under Chapter 466, Section 837(1).

Specific authorities to regulate the installation, operation, maintenance, and closure of USTs, as well as UST releases are found under Oregon Administrative Rule (OAR), as amended effective June 1, 2018, Chapter 340, Division 150, Underground Storage Tank Rules; DEQ may prohibit delivery to any UST identified by DEQ as ineligible for delivery under OAR 340-150-0020(1), 0080, 0150, 0152, and 0163; reporting and recordkeeping requirements are found under OAR 340-150-0135. Procedures for receipt, evaluation, retention and investigation of required records and reports are under OAR 340-150-0135. The aforementioned statutory sections and regulations satisfy the requirements of 40 CFR 281.40 and 281.41.

Through a Memorandum of Agreement between the State of Oregon and the EPA, effective **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, the State maintains procedures for receiving and ensuring proper consideration of information about violations submitted by the public. The State agrees to comply with public participation provisions contained in 40 CFR 281.42 including the provision that the State will not oppose intervention under Oregon Rules of Civil Procedure 33C, its analogue to Federal Rule 24(a)(2), on the grounds that the applicant's interest is adequately represented by the State. Oregon has met the public participation requirements found in 40 CFR 281.42.

To qualify for final approval, revisions to a state's program must be "equivalent to, consistent with, and no less stringent" than the 2015 Federal Revisions. In the 2015 Federal Revisions the EPA addressed UST systems deferred in the 1988 UST regulations, and added, among other things, new operation and maintenance requirements; secondary containment requirements for new and replaced tanks and piping; operator training requirements; and a requirement to ensure UST system compatibility before storing certain biofuel blends. In

addition, the EPA removed past deferrals for emergency generator tanks, field constructed tanks, and airport hydrant systems. The EPA analyzes revisions to approved state programs pursuant to the criteria found in 40 CFR 281.30 through 281.39.

The DEQ has revised its regulations to help ensure that the State's UST program revisions are equivalent to, consistent with, and no less stringent than the 2015 Federal Revisions.

Title 40 CFR 281.39 describes the state operator training requirements that must be met to be considered equivalent to, consistent with, and no less stringent than Federal requirements. Oregon did not incorporate by reference Federal requirements for operator training, and has promulgated and is implementing its own operator training provisions under OAR 340-150-0200, 0210, and 0315. After a thorough review, the EPA has determined that Oregon's operator training requirements are equivalent to, consistent with, and no less stringent than federal requirements.

As part of the State Application the Oregon Attorney General certified that the State revisions meet the requirements "equivalent to, consistent with, and no less stringent" criteria in 40 CFR 281.30 through 281.39. The EPA is relying on this certification in addition to the analysis submitted by the State in making our determination.

H. Where are the revised rules different from the Federal rules?

Broader in Scope Provisions

Where an approved state program has a greater scope of coverage than required by Federal law, the additional coverage is not part of the federally-approved program and is not federally enforceable (40 CFR 281.12(a)(3)(ii)). The following statutory and regulatory

requirements are considered broader in coverage than the Federal program as these State-only regulations are not required by Federal regulation and are implemented by the State in addition to the federally approved program:

Heating oil tanks are regulated under OAR Chapter 340 Division 177. DEQ's requirement to report and clean up releases from underground heating oil tanks (HOTs) is broader in scope. Additionally, DEQ encourages voluntary decommissioning of HOTs and licenses UST and HOT service providers and supervisors. These programs are also broader in scope than the federal program.

Tank owners who install, decommission or test their own tanks are required to take the same proficiency examination as UST supervisors to ensure that they have the technical knowledge to do the work safely and correctly.

The universe of "suspected releases that trigger reporting, investigation and confirmation" under OAR 340-150-0500 may be broader than the Federal rule, including discovery of a release into a secondary containment area and monitoring results or alarms from release detection systems.

The State has provided for release response and corrective action in its remedial action rules under OAR Chapter 340, Division 122. As a general matter, the universe of regulated persons is broader under the state rules than under the federal rules. The obligations in Division 122 are imposed upon "the responsible person," a term that appears to encompass a broader class of persons than the term "owner and operator".

The State standard for system cleaning upon permanent closure is the same as that found at 40 CFR 280.71(b), except that the State requirements apply to the UST system as a whole, whereas the Federal requirements apply to tanks. If the permittee proposes to close the UST in place and fill it, then the permittee must submit a site assessment plan. Closure cannot begin until the plan is approved by the DEQ.

The operation and maintenance of corrosion protection systems apply to all USTs and piping. The Federal rules apply only to steel UST systems with corrosion protection.

More Stringent Provisions

Where an approved state program includes requirements that are considered more stringent than required by Federal law, the more stringent requirements become part of the federally approved program. (40 CFR 281.12(a)(3)(ii)).

The following statutory and regulatory requirements are considered more stringent than the Federal program, and on approval, they become part of the federally approved program and are federally enforceable:

The State rules do not allow the use of metal tanks or piping without corrosion protection as allowed in 40 CFR 280.20(a)(4) and (b)(3), which states that no corrosion protection is required for metal tanks and piping installed at a site that have been determined by a corrosion expert not to be corrosive enough to cause either the tank or the piping to have a release due to corrosion during its operating life. Because the State does not allow the alternative to corrosion protection found in 40 CFR 280.20(a)(4), the State rules do not have a recordkeeping requirement that corresponds with that in 40 CFR 280.34(b)(1). OAR 340-150-0320.

The State rules do not allow for the use of alternative types of tanks and piping determined to be equally protective in preventing releases as those otherwise identified in the rules, as allowed in 40 CFR 280.20(a)(5) and (b)(4).

The State rules allow only one mode of certifying the installation. The certification of compliance must be signed by the owner, permittee and a service provider licensed by the department, and must certify that the system has been installed in compliance with the required methods and standards. OAR 340-150-0160.

The State rules require used USTs that have been removed from the ground to be certified by a UST manufacturer in writing before being reused. OAR 340-150-0302(2).

The owner and permittee must notify DEQ at least 30 days before beginning installation of a UST system. (DEQ may allow a shorter period on a case-by-case basis) OAR 340-150-0160(2).

The owner and permittee must notify DEQ of the confirmed time and date of the installation of the UST system at least three working days before beginning the installation. DEQ may also request additional notifications. OAR 340-150-0160(3).

DEQ's installation checklist required upon completion of the installation requires certification of compliance with required installation standards and methods, and the standards for spill and overfill prevention, corrosion protection release detection and financial responsibility as is required by 40 CFR 280.22. DEQ's installation checklist also requires the owner and permittee to provide substantially more information than appears to be required by 40 CFR 280.22(e) and (f).

Repaired tanks and piping must be tested after completion of the repairs and before operation. OAR 340-150-0350(3)(a) and (4). The Federal rules allow an UST system to return to service providing testing is conducted within 30 days of repair.

Any test failures must be reported to DEQ. OAR 340-150-0163(1)(c) and (e); OAR 340-150-0325(4); OAR 340-150-0350(3)(a) and (4).

Repaired tanks, except tanks repaired by lining, must be certified as meeting the performance standards by the original manufacturer or, if unavailable, another manufacturer of the same type of tank. OAR-340-0350.

The State requires an investigation of the magnitude and extent of soil and groundwater contamination if not otherwise fully identified in the course of the initial site characterization. OAR 340-122-0240. This requirement is more stringent than those under 40 CFR 280.65, to the extent that the additional investigation in 40 CFR 280.65 is triggered only if groundwater wells have been affected, free product is found to need recovery, soils may be in contact with groundwater or the implementing agency requests an investigation.

The permittee must perform a site assessment before permanent closure or change in service. OAR 340-150-0168 and OAR 340-150-0180. The State requirements are more stringent in that the owner or permittee, which is using groundwater or vapor monitoring in accordance with state rules, cannot satisfy the requirements of the site assessment by relying on their release detection method in place at the time of closure as allowed by 40 CFR 280.72(a).

The rules in OAR Division 150 apply to all UST systems taken out of operation between January 1, 1974 and May 1, 1988, if not emptied and cleaned as required by OAR 340-150-

0168(4), and to all UST systems taken out of operation before January 1, 1974, if not empty. OAR 340-150-0006(2). This requirement is more stringent than the Federal standard in 40 CFR 280.73, which states that the owner and operator of an UST system permanently closed before December 22, 1988, must assess the excavation zone and close the UST system in accordance with the subpart if releases from the UST may, in the judgment of the implementing agency, pose a current or potential threat to human health and the environment.

The State rules do not include the options for overfill prevention equipment found in 40 CFR 280.20(c)(1)(ii)(C) and (c)(2)(i). In 40 CFR 280.20(c)(1)(ii)(C), Federal rules allow an overfill device that can restrict flow 30 minutes prior to overfilling, alert the transfer operator with a high-level alarm one minute before overfilling, or automatically shut off flow into the tank so that none of the fittings located on top of the tank are exposed to product due to overfilling. In 40 CFR 280.20(c)(2)(i), Federal rules state that owners and operators are not required to use the spill and overfill prevention equipment specified in paragraph (c)(1) of the section if alternative equipment is used that is determined by the implementing agency to be no less protective of human health and the environment than the equipment specified in 40 CFR 280.20(c)(1)(i) or (ii).

I. How does this action affect Indian country (18 U.S.C. 1151) in Oregon?

The EPA's approval of Oregon's Program does not extend to Indian country as defined in 18 U.S.C. 1151. Indian country generally includes lands within the exterior boundaries of the following Indian reservations located within Oregon: Burns Paiute, Grande Ronde, Klamath, Siletz, Umatilla and Warm Springs Reservations; any land held in trust by the United States for an Indian tribe; and any other areas that are "Indian country" within the meaning of 18 U.S.C.

1151. Any lands removed from an Indian reservation status by Federal court action are not considered reservation lands even if located within the exterior boundaries of an Indian reservation. The EPA will retain responsibilities under RCRA for underground storage tanks in Indian country. Therefore, this action has no effect in Indian country. *See* 40 CFR 281.12(a)(2).

II. Codification

A. What is codification?

Codification is the process of placing a state's statutes and regulations that comprise the state's approved UST program into the CFR. Section 9004(b) of RCRA, as amended, allows the EPA to approve State UST programs to operate in lieu of the Federal program. The EPA codifies its authorization of state programs in 40 CFR part 282 and incorporates by reference state regulations that the EPA will enforce under Sections 9005 and 9006 of RCRA and any other applicable statutory provisions. The incorporation by reference of state authorized programs in the CFR should substantially enhance the public's ability to discern the current status of the approved state program and state requirements that can be federally enforced. This effort provides clear notice to the public of the scope of the approved program in each state.

B. What is the history of codification of Oregon's UST program?

The EPA incorporated by reference and codified Oregon's then-approved UST program in 40 CFR 282.87, effective June 29, 2012 (77 FR 25368, April 30, 2012). Through this action, the EPA is incorporating by reference and codifying Oregon's State program in 40 CFR 282.87 to include the approved revisions.

C. What codification decisions have we made in this rule?

In this rule, we are finalizing the regulatory text that incorporates by reference the federally authorized Oregon UST Program. In accordance with the requirements of 1 CFR 51.5, we are finalizing the incorporation by reference of the Oregon rules described in the amendments to 40 CFR part 282 set forth below. The EPA has made, and will continue to make, these documents generally available through www.regulations.gov and at the EPA Region 10 office (see the **ADDRESSES** section of this preamble for more information).

One purpose of this **Federal Register** document is to codify Oregon's approved UST program. The codification reflects the State program that would be in effect at the time the EPA's approved revisions to the Oregon UST program addressed in this direct final rule become final. If, however, the EPA receives substantive comment on the rule then this codification will not take effect, and the State rules that are approved after the EPA considers public comment will be codified instead. By codifying the approved Oregon program and by amending the Code of Federal Regulations (CFR), the public will more easily be able to discern the status of the federally-approved requirements of the Oregon program.

The EPA is incorporating by reference the Oregon approved UST program in 40 CFR 282.87. Section 282.87(d)(1)(i)(A) and (B) incorporate by reference for enforcement purposes the State's relevant statutes and regulations. Section 282.87 also references the Attorney General's Statement, Demonstration of Adequate Enforcement Procedures, the Program Description, and the Memorandum of Agreement, which are approved as part of the UST program under Subtitle I of RCRA.

D. What is the effect of EPA's codification of the federally authorized State UST Program on enforcement?

The EPA retains the authority under Sections 9003(h), 9005 and 9006 of Subtitle I of RCRA, 42 U.S.C. 6991b(h), 6991d and 6991e, and other applicable statutory and regulatory provisions to undertake corrective action, inspections, and enforcement actions, and to issue orders in approved states. If the EPA determines it will take such actions in Oregon, the EPA will rely on Federal sanctions, Federal inspection authorities, and other Federal procedures rather than the state analogs. Therefore, though the EPA has approved the State procedures listed in 40 CFR 282.87(d)(1)(i), the EPA is not incorporating by reference Oregon's procedural and enforcement authorities.

E. What State provisions are not part of the codification?

The public also needs to be aware that some provisions of the State's UST program are not part of the federally approved State program. Such provisions are not part of the RCRA Subtitle I program because they are "broader in coverage" than Subtitle I of RCRA. Title 40 CFR 281.12(a)(3)(ii) states that where an approved State program has provisions that are broader in coverage than the Federal program, those provisions are not a part of the federally approved program. As a result, State provisions which are "broader in coverage" than the Federal program are not incorporated by reference for purposes of enforcement in part 282. Title 40 CFR 282.87(d)(1)(iii) lists for reference and clarity the Oregon statutory and regulatory provisions which are "broader in coverage" than the Federal program and which are not, therefore, part of the approved program being codified in this rule. Provisions that are "broader in coverage" cannot be enforced by EPA; the State, however, will continue to implement and enforce such provisions under State law.

III. Statutory and Executive Order (EO) Reviews

This action only applies to Oregon's UST Program requirements pursuant to RCRA Section 9004 and imposes no requirements other than those imposed by State law. It complies with applicable EOs and statutory provisions as follows:

A. Executive Order 12866 Regulatory Planning and Review, Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is not an Executive Order 13771 (82 FR 9339, February 3, 2017) regulatory action because actions such as this final approval of Oregon's revised underground storage tank program under RCRA are exempted under Executive Order 12866. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

C. Unfunded Mandates Reform Act and Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Because this action approves and codifies pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538). For the same reason, this action also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

D. Executive Order 13132: Federalism

This action will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, Aug. 10, 1999), because it merely approves and codifies state requirements as part of the State RCRA Underground Storage Tank Program without altering the relationship or the distribution of power and responsibilities established by RCRA.

E. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

This action also is not subject to Executive Order 13045 (62 FR 19885, Apr. 23, 1997), because it is not economically significant, as defined in Executive Order 12866, and because the EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

F. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a “significant regulatory action” as defined under Executive Order 12866.

G. National Technology Transfer and Advancement Act

Under RCRA Section 9004(b), the EPA grants a state’s application for approval as long as the state meets the criteria required by RCRA. It would thus be inconsistent with applicable law for the EPA, when it reviews a state approval application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

H. Executive Order 12988: Civil Justice Reform

As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in

issuing this rule, the EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct.

I. Executive Order 12630: Governmental actions and interference with constitutionally protected property rights

The EPA has complied with Executive Order 12630 (53 FR 8859, Mar. 15, 1988) by examining the takings implications of the rule in accordance with the “Attorney General’s Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings” issued under the executive order.

J. Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). “Burden” is defined at 5 CFR 1320.3(b).

K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low Income Populations

Executive Order 12898 (59 FR 7629, Feb. 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. Because this rule approves pre-existing state rules which are at least equivalent to, consistent with, and no less stringent than existing Federal requirements, and imposes no additional requirements beyond those imposed by state law, and

there are no anticipated significant adverse human health or environmental effects, the rule is not subject to Executive Order 12898.

L. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801–808, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this document and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2). However, this action will be effective **[INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]** because it is a direct final rule.

Authority: This rule is issued under the authority of Sections 2002(a), 7004(b), and 9004, 9005 and 9006 of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912(a), 6974(b), and 6991c, 6991d, and 6991e.

List of Subjects in 40 CFR Part 282

Environmental protection, Administrative practice and procedure, Hazardous substances, Incorporation by reference, State program approval, Underground storage tanks.

Dated: June 27, 2019.

Chris Hladick,
Regional Administrator,
EPA Region 10

For the reasons set forth in the preamble, EPA is amending 40 CFR part 282 as follows:

PART 282—APPROVED UNDERGROUND STORAGE TANK PROGRAMS

1. The authority citation for part 282 continues to read as follows:

Authority: 42 U.S.C. 6912, 6991c, 6991d, and 6991e.

2. Revise § 282.87 to read as follows:

§ 282.87 Oregon State-Administered Program.

(a) The State of Oregon is approved to administer and enforce an underground storage tank program in lieu of the Federal program under Subtitle I of the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. 6991 *et seq.* The State's program, as administered by the Oregon Department of Environmental Quality (DEQ), was approved by EPA pursuant to 42 U.S.C. 6991c and part 281 of this chapter. The EPA published the notice of final determination approving the Oregon underground storage tank base program effective on September 16, 2011. A subsequent program revision application was approved by the EPA and became effective on **[INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

(b) Oregon has primary responsibility for administering and enforcing its federally approved underground storage tank program. However, the EPA retains the authority to exercise its corrective action, inspection, and enforcement authorities under Sections 9003(h), 9005, and 9006 of Subtitle I of RCRA, 42 U.S.C. 6991b(h), 6991d and 6991e, as well as under any other applicable statutory and regulatory provisions.

(c) To retain program approval, Oregon must revise its approved program to adopt new changes to the Federal Subtitle I program which make it more stringent, in accordance with section 9004 of RCRA, 42 U.S.C. 6991c, and 40 CFR part 281, subpart E. If Oregon obtains

approval for the revised requirements pursuant to Section 9004 of RCRA, 42 U.S.C. 6991c, then the newly approved statutory and regulatory provisions will be added to this subpart and notification of any change will be published in the *Federal Register*.

(d) Oregon has final approval for the following elements of its program application originally submitted to the EPA and approved effective September 16, 2011, and the program revision application approved by the EPA, effective on **[INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]**:

(1) *State statutes and regulations.* (i) The materials cited in this paragraph (d)(1) are incorporated by reference as part of the underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*, with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the EPA must publish a document in the *Federal Register* and the material must be available to the public. All approved material is available for inspection at EPA Region 10, 1200 Sixth Avenue, Suite 155, Seattle, WA 98101, phone number (206) 553-6693. Copies of Oregon's program application may be obtained from the Underground Storage Tank Program, Oregon Department of Environmental Quality, 811 SW Sixth Avenue, Portland, Oregon, 97204. All approved material is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of the material at NARA, call 202-741-6030 or go to www.archives.gov/federal-register/cfr/ibr-locations.html.

(A) Oregon Statutory Requirements Applicable to the Underground Storage Tank Program, June 2018.

(B) Oregon Regulatory Requirements Applicable to the Underground Storage Tank Program, June 2018.

(ii) The EPA considered the following statutes and regulations in evaluating the State program, but did not incorporate them by reference.

(A) The statutory provisions include:

(1) Oregon Revised Statutes, Chapter 183, Administrative Procedures Act, 2017, insofar as the provisions and procedures apply to the underground storage tank program.

(2) Chapter 465, Hazardous Waste and Hazardous Materials I (Removal or Remedial Action: Sections 465.200-465.482 and 465.900), insofar as these provisions apply to matters involving an “underground storage tank” as that term is defined in ORS 466.706(21), as limited by the exclusions listed in ORS 466.710, except that the term does not include a tank used for storing heating oil for consumptive use on the premises where stored. The following Sections are part of the approved State program, although not incorporated by reference herein for enforcement purposes: Sections 465.205 through 465.250, 465.257 through 465.300, 465.310 through 465.335, 465.400 through 465.435, 465.445 through 465.455 and 465.900.

(3) Chapter 466, Hazardous Waste and Hazardous Materials II (Oil Storage Tanks: Sections 466.706-466.920 and Sections 466.990-466.995), insofar as these provisions apply to matters involving an “underground storage tank” as that term is defined in ORS 466.706(21), as limited by the exclusions listed in ORS 466.710, except that the term does not include a tank used for storing heating oil for consumptive use on the premises where stored. The following Sections are part of the approved State program, although not incorporated by reference herein for enforcement purposes: Sections 466.715 through 466.735, 466.746, 466.760, 466.775

through 466.780, 466.791 through 466.810, 466.820, 466.830 through 466.845, 466.901 through 466.920 and 466.994 through 466.995.

(4) Chapter 468 Environmental Quality Generally, insofar as these provisions apply to matters involving an “underground storage tank” as that term is defined in ORS 466.706(21), as limited by the exclusions listed in ORS 466.710, except that the term does not include a tank used for storing heating oil for consumptive use on the premises where stored. The following Sections are part of the approved State program, although not incorporated by reference herein for enforcement purposes: Sections 468.005 through 468.050, 468.090 through 468.140 and 468.963.

(B) The regulatory provisions include:

(1) Oregon Administrative Rules, Chapter 340, Division 11: Section 340-11-0545.

(2) Oregon Administrative Rules, Chapter 340, Division 12: Sections 340-012-0026 through 340-012-0053, 340-012-0067 (with the exception of subparagraphs (1) (k) and (l) and (2) (g) through (j)), 340-012-0074 (with the exception of subparagraph (1) (g)) and 340-012-0170 insofar as this applies to violations involving an underground storage tank.

(3) Oregon Administrative Rules, Chapter 340, Division 122: Sections 340-122-0074 through 340-122-0079 and 340-122-0130 through 340-122-0140.

(4) Oregon Administrative Rules, Chapter 340, Division 142: Section 340-142-0120.

(5) Oregon Administrative Rules, Chapter 340, Division 150: Sections 340-150-0150 through 340-150-0152, 340-150-0250, 340-150-0600 through 340-150-0620.

(6) Oregon Code of Civil Procedure 33C.

(7) Oregon Administrative Rules, Chapter 690, Division 240, insofar as these provisions apply to matters involving an “underground storage tank” as that term is defined in ORS

466.706(21), as limited by the exclusions listed in ORS 466.710, except that the term does not include a tank used for storing heating oil for consumptive use on the premises where stored. The following Sections are part of the approved State program, although not incorporated by reference herein for enforcement purposes: Sections 690-240-0015, 690-240-0020, 690-240-0055 through 690-240-0340 and 690-240-0560 through 690-240-0640.

(iii) The following specifically identified sections and rules applicable to the Oregon underground storage tank program that are broader in scope than the Federal program, are not part of the approved program, and are not incorporated by reference herein for enforcement purposes:

(A) The statutory provisions include:

(1) Chapter 465, Hazardous Waste and Hazardous Materials I (Removal or Remedial Action): Sections 465.305; 465.340 through 465.391; 465.440; and 465.475 through 465.482.

(2) Chapter 466, Hazardous Waste and Hazardous Materials II (Oil Storage Tanks): Sections 466.750; 466.783 through 466.787; 466.858 through 466.882; and 466.990 through 466.992).

(3) Chapter 468, Environmental Quality Generally: Sections 468.055 through 468.089.

(B) The regulatory provisions include:

(1) Oregon Administrative Rules, Chapter 340: Divisions 160, 162, 163, 170, 177 and 178.

(2) Oregon Administrative Rules, Chapter 837, Division 40.

(2) *Statement of legal authority.* The Attorney General Statement, a letter signed on October 12, 2018, though not incorporated by reference, is referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(3) *Demonstration of procedures for adequate enforcement.* The “Demonstration of Procedures for Adequate Enforcement” submitted as part of the application for approval on October 19, 2018, though not incorporated by reference, is referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(4) *Program description.* The program description and any other material submitted as part of the original application on October 19, 2018, though not incorporated by reference, are referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

(5) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region 10 and the Oregon Department of Environmental Quality, signed by the EPA Regional Administrator on March 19, 2019, though not incorporated by reference, is referenced as part of the approved underground storage tank program under Subtitle I of RCRA, 42 U.S.C. 6991 *et seq.*

3. Appendix A to part 282 is amended by revising the entry for Oregon to read as follows:

Appendix A to Part 282—State Requirements Incorporated by Reference in Part 282 of the Code of Federal Regulations

* * * * *

Oregon

(a) The statutory provisions include:

(1) Chapter 465, Hazardous Waste and Hazardous Materials I (Removal or Remedial Action Sections 465.200 through 465.425):

465.200 Definitions for ORS 465.200 to 465.425 (except for Sections 465.200(5) through (11) and (17) defining terms contained in the dry cleaning requirements; (13) “facility” insofar as it applies to a facility that is not an underground storage tank; (16) “hazardous substance” insofar as it applies to hazardous wastes and any substance that is not otherwise defined as a hazardous substance pursuant to section 101(14) of the Federal Comprehensive Environmental Response, Compensation and Liability Act or that is not oil; (28) “underground storage tank” insofar as it includes any tank or piping that is excluded under ORS 466.710 and also any tank used to store heating oil for consumptive use on the premises where stored.)

465.255 Strict liability for remedial action costs for injury or destruction of natural resource; limited exclusions (except insofar as this includes a person who is not an owner or operator of an underground storage tank and except insofar as the exclusions would exclude persons who would be liable under Section 9003(h)(6) of RCRA).

(2) Chapter 466, Hazardous Waste and Hazardous Materials II (Oil Storage Tanks):

466.706 Definitions for ORS 466.706 to 466.882 and 466.994 (except for the following definitions: Section 466.706(17) “regulated substance” insofar as it would include substances designated by the commission under subsection (c) that are not included under subsections (a) and (b) of this definition; (21) “underground storage tank” insofar as it includes any tank or piping that is excluded under ORS 466.710, and any tank used to store heating oil for consumptive use on the premises where stored.)

466.710 Application of ORS 466.706 to 466.882 and 466.994

466.740 Noncomplying installation prohibited

466.743 Training on operation, maintenance and testing; rules

466.765 Duty of owner or permittee of underground storage tank

466.770 Corrective action required on contaminated site

466.815 Financial responsibility of owner or permittee; rules; legislative review

466.825 Strict liability of owner or permittee

(b) The regulatory provisions include:

(1) Oregon Administrative Rules, Chapter 340, Division 122 insofar as the following rules apply to a release from an underground storage tank, excluding tanks used to store heating oil for consumptive use on the premises where stored.

340-122-0010 Purpose

340-122-0030 Scope and Applicability

340-122-0040 Standards

340-122-0047 Generic remedies

340-122-0050 Activities

340-122-0070 Removal

340-122-0071 Site Evaluation

340-122-0072 Preliminary Assessments

340-122-0073 Confirmation of Release

340-122-0080 Remedial Investigation

340-122-0084 Risk Assessment

340-122-0085 Feasibility Study

340-122-0090 Selection or Approval of the Remedial Action

340-122-0100 Public Notice and Participation

340-122-0110 Administrative Record

340-122-0115 Definitions insofar as the definition applies to an underground storage tank, excluding tanks used to store heating oil for consumptive use on the premises where stored

340-122-0120 Security Interest Exemption

340-122-0205 Purpose

340-122-0210 Definitions except insofar as the definition of “responsible person” includes a person who does not own or operate an underground storage tank

340-122-0215 Scope and Applicability

340-122-0217 Requirements and Remediation Options

340-122-0218 Sampling and Analysis

340-122-0220 Initial Response

340-122-0225 Initial Abatement Measures and Site Check

340-122-0230 Initial Site Characterization

340-122-0235 Free Product Removal

340-122-0240 Investigation for Magnitude and Extent of Contamination

340-122-0243 Low-Impact Sites

340-122-0244 Risk-Based Concentrations

340-122-0250 Corrective Action Plan

340-122-0252 Generic Remedies

340-122-0260 Public Participation

340-122-0320 Soil Matrix Cleanup Options

340-122-0325 Evaluation of Matrix Cleanup Level

340-122-0330 Evaluation Parameters

340-122-0335 Numeric Soil Cleanup Standards

340-122-0340 Sample Number and Location

340-122-0345 Sample Collection Methods

340-122-0355 Evaluation of Analytical Results

340-122-0360 Reporting Requirements

(2) Oregon Administrative Rules, Chapter 340, Division 142 insofar as the following rules apply to a release from an underground storage tank, excluding tanks used to store heating oil for consumptive use on the premises where stored.

340-142-0001 Purpose and Scope

340-142-0005 Definitions as Used in This Division Unless Otherwise Specified

340-142-0030 Emergency Action

340-142-0040 Required Reporting

340-142-0050 Reportable Quantities

340-142-0060 Cleanup Standards

340-142-0070 Approval Required for Use of Chemicals

340-142-0080 Disposal of Recovered Spill Materials

340-142-0090 Cleanup Report

340-142-0100 Sampling/Testing Procedures

340-142-0130 Incident Management and Emergency Operations

(3) Oregon Administrative Rules, Chapter 340, Division 150.

340-150-0001 Purpose

340-150-0006 Applicability and General Requirements

340-150-0008 Exemptions and Deferrals

340-150-0010 Definitions

340-150-0020 UST General Permit Registration Certificate Required except insofar as this provision applies to a person who does not own or operate an underground storage tank and except insofar as the payment of fees is required

340-150-0021 Termination of Temporary Permits

340-150-0052 Modification of Registration Certificates for Changes in Ownership and Permittee except insofar as the payment of fees is required

340-150-0080 Denial, Suspension or Revocation of General Permit Registration Certificates except insofar as this provision applies to a person who does not own or operate an underground storage tank

340-150-0102 Termination of Registration Certificates

340-150-0110 UST General Permit Registration, Annual Compliance and Other Fees except insofar as the payment of fees is required

340-150-0135 General Requirements for Owners and Permittees

340-150-0137 UST Systems with Field-Constructed Tanks and Airport Hydrat Fuel Distribution Systems

340-150-0140 Requirements for Sellers of USTs

340-150-0156 Performance of UST Services by Owners or Permittees

340-150-0160 General Permit Requirements for Installing an UST System except insofar as this provision applies to a person who does not own or operate an underground storage tank

340-150-0163 General Permit Requirements for Operating an UST System except insofar as the payment of fees is required

340-150-0167 General Permit Requirements for Temporary Closure of an UST System except insofar as the payment of fees is required

340-150-0168 General Permit Requirements for Decommissioning an UST System by Permanent Closure except insofar as this provision applies to a person who does not own or operate an underground storage tank and except insofar as the payment of fees is required

340-150-0180 Site Assessment Requirements for Permanent Closure or Change-in-Service

340-150-0200 Training Requirements for UST System Operators and Emergency Response Information

340-150-0210 Training Requirements for UST Operators

340-150-0302 Installation of Used USTs

340-150-0310 Spill and Overfill Prevention Equipment and Requirements

340-150-0315 Periodic operation and maintenance walkthrough inspections

340-150-0320 Corrosion Protection Performance Standards for USTs and Piping

340-150-0325 Operation and Maintenance of Corrosion Protection

340-150-0350 UST System Repairs

340-150-0352 UST System Modifications and Additions

340-150-0354 UST System Replacements

340-150-0360 Requirements for Internally Lined USTs

340-150-0400 General Release Detection Requirements for Petroleum UST Systems

340-150-0410 Release Detection Requirements and Methods for Underground Piping

340-150-0420 Release Detection Requirements for Hazardous Substance UST Systems

340-150-0430 Inventory Control Method of Release Detection

340-150-0435 Statistical Inventory Reconciliation Method of Release Detection

340-150-0440 Manual Tank Gauging Release Detection Method

340-150-0445 Tank Tightness Testing for Release Detection and Investigation

340-150-0450 Automatic Tank Gauging Release Detection Method

340-150-0465 Interstitial Monitoring Release Detection Method

340-150-0470 Other Methods of Release Detection

340-150-0500 Reporting Suspected Releases

340-150-0510 Suspected Release Investigation and Confirmation Steps

340-150-0520 Investigation Due to Off Site Impacts

340-150-0540 Applicability to Previously Closed UST Systems

340-150-0550 Definitions for OAR 340-150-0555 and 340-150-0560

340-150-0555 Compliance Dates for USTs and Piping

340-150-0560 Upgrading Requirements for Existing UST Systems

(4) Oregon Administrative Rules, Chapter 340, Division 151

340-151-0001 Purpose

340-151-0010 Scope and Applicability

340-151-0015 Adoption and Applicability of United States Environmental Protection
Agency Regulations

340-151-0020 Definitions

340-151-0025 Oregon-Specific Financial Responsibility Requirements

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